



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 16 2013

Patrick Gaspard, Executive Director
Democratic National Committee
430 South Capitol Street, SE
Washington, D.C. 20003

RE: MUR 6112 and AF 2638

Dear Mr. Gaspard:

This is in reference to the complaint that the Democratic National Committee filed with the Federal Election Commission on October 28, 2008, which was designated as MUR 6112, concerning John McCain 2008, Inc. and Joseph Schmuckler in his official capacity as Treasurer ("Committee"), alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").

On August 24, 2010, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(f) of the Act, and authorized an audit pursuant to 2 U.S.C. § 437g. Also on August 24, 2010, the Commission found no reason to believe that the Committee failed to disclose a \$56,047 contribution from Brian Medeska in violation of 2 U.S.C. § 434(b), or that the Committee violated 2 U.S.C. § 432(c) by failing to properly account for the receipt of anonymous contributions and maintain identifying information for other contributors. On January 8, 2013, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b) of the Act. Copies of the Factual and Legal Analyses, which formed the basis for the Commission's determinations, are enclosed.

On July 11, 2013, the Commission accepted a conciliation agreement signed by Joseph Schmuckler in his official capacity as treasurer to resolve the Committee's violations of the Act. This agreement settles the Committee's violations of 2 U.S.C. §§ 434(b) and 441a(f) identified in the Matter Under Review, as well as violations of 2 U.S.C. § 434(b) by the McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler in his official capacity as Treasurer ("McCain-Palin Compliance Fund"), which were identified during the Commission's audits and merged into the Matter Under Review. A copy of the Factual and Legal Analysis, which formed the basis of the Commission's determination regarding the McCain-Palin Compliance Fund matter, is enclosed. The agreement also settles violations of 2 U.S.C. § 434(a)(6)(A) by the McCain-Palin Compliance Fund, which were identified during the Commission's audits. The

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Patrick Gaspard, Executive Director
Democratic National Committee
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Commission simultaneously closed the file in this matter. A copy of the Conciliation Agreement with the Committee and the McCain-Palin Compliance Fund is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

The Act allows a complainant to seek judicial review of the Commission's resolution of this action. *See* 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Marianne Abely

Marianne Abely
Attorney

Enclosures

Factual and Legal Analyses
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: John McCain 2008, Inc. and MUR 6112
Joseph Schmuckler, in his official
capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed by the Democratic National Committee ("the complainant"). *See* 2 U.S.C. § 437g(a)(1).

The complainant alleges that John McCain 2008, Inc. and Joseph Schmuckler, in his official capacity as treasurer, ("Comanittee") violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by accepting millions of dollars in excessive contributions, failing to disclose a \$56,047 individual contribution from Brian Medeska, and failing to properly account for the receipt of anonymous contributions and maintain identifying information for other contributors. 2 U.S.C. §§ 432(c), 434(b) and 441a(f). The Committee denies violating the Act and urges the Commission to find that no violations occurred and dismiss the matter. According to the Committee, the complainant's allegations are groundless because they are based on information accessed from the campaign's searchable online database that temporarily contained inadvertent errors and did not show the results of its ongoing process of refunding, redesignating, and reattributing contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. RECEIPT OF EXCESSIVE CONTRIBUTIONS

1. Factual Summary

The Committee was the principal campaign committee for presidential candidate John McCain during the 2008 primary election cycle. The Committee raised over \$246,117,990.70 in contributions for the primary election, which it disclosed in reports filed with the Commission. In addition to filing disclosure reports with the Commission, the Committee voluntarily disclosed contributions to the public through a searchable database on its campaign website, www.JohnMcCain.com, called the Primary Election Donor Lookup Archive ("Donor Archive"). The Donor Archive listed contributions received exclusively during the primary election period because John McCain's general election committee, McCain-Palin 2008, Inc., participated in the presidential public funding program and did not raise private contributions after August 31, 2008. *See* 2 U.S.C. § 9031.

Based on a review of the Donor Archive, performed between October 18, 2008 and October 20, 2008, the complainant alleges that the Committee violated the Act by accepting excessive contributions totaling nearly \$7 million. 2 U.S.C. § 441a(a)(1). Specifically, the complainant alleges that the Committee accepted 6,653 contributions that were at least \$1,000 in excess of the \$2,300 limit for the primary election, and may have accepted additional excessive contributions that it failed to disclose. The complainant assembled a list of these contributions from the Donor Archive, which is attached to the complaint. This list includes the name of each contributor's name, city, state and zip code, as well as the amount of contribution. According to the complainant,

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1 nineteen of the individuals listed contributed more than \$10,000 each to the Committee.
2 One of these individuals, Brian Medeska, allegedly made a \$56,047.00 contribution to the
3 Committee, which the campaign failed to report on any of its disclosure reports in
4 violation of the Act. 2 U.S.C. § 434(b).¹ Although the complainant primarily used the
5 voluntary Donor Archive as the basis for its allegations relating the Committee's
6 acceptance of excessive contributions, the complainant also appears to have reviewed one
7 of the ten RFAs received by the campaign as of October 2008 relating to the acceptance
8 of excessive contributions, and cites to it to demonstrate the Committee's "extensive
9 recent history of flouting" FECA. This RFA, dated September 30, 2008, included a
10 nine-page list of apparent excessive contributions disclosed in the Committee's M8
11 Report.

12 The Committee denies that it accepted any excessive contributions in violation of
13 the Act. The Committee states that the Donor Archive experienced a data entry problem
14 in October 2008 resulting in the complainant downloading inaccurate contribution
15 information. The response also states that, because the Donor Archive was updated once
16 a month, it only provided a static view of the campaign's contribution processing.
17 According to the Committee, this resulted in the Donor Archive listing some contributors
18 as having given over the \$2,300 limit even though these contributors received refunds or
19 authorized redesignations or reattributions within the 60-day deadline. Further, the
20 Committee contends that the complainant's reliance on the Donor Archive, which is a

¹ The complaint appears to have erroneously cited 2 U.S.C. § 434(a) in connection with Committee's failure to report the \$56,047.00 contribution. Section 434(a) governs the filing of disclosure reports by committee treasurers. Given that the complainant's allegation relates to the failure to disclose an individual contribution in excess of \$200, the Commission analyzed this issue under 2 U.S.C. § 434(b), which governs the contents of disclosure reports, including the itemization of contributions in excess of \$200. 2 U.S.C. § 434(b)(3)(A).

1 voluntary and unofficial database of information, is insufficient to establish that the
2 campaign actually accepted excessive contributions in violation of the Act.

3 The Commission reviewed the Committee's disclosure reports for the 2008
4 primary election cycle, which reflected that the Committee received a total of
5 \$5,716,260.80 in apparent excessive contributions during the primary election cycle,
6 which were not refunded, redesignated or reattributed in a timely manner. *See* Chart
7 below.

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REPORT	OUTSTANDING EXCESSIVES		TOTAL CONTRIBUTIONS
2006 YE	\$8,000.00	of	\$1,710,387.41
2007 Q1	\$59,225.00	of	\$13,025,695.50
2007 Q2	\$52,250.00	of	\$36,212,773.86
2007 Q3	\$14,875.00	of	\$5,698,139.82
2007 YE	\$13,550.00	of	\$6,836,072.13
2008 M2	\$11,119.00	of	\$11,730,045.17
2008 M3	\$22,310.00	of	\$11,014,611.37
2008 M4	\$121,419.00	of	\$15,192,499.28
2008 M5	\$238,705.00	of	\$17,967,511.38
2008 M6	\$492,657.68	of	\$20,888,390.64
2008 M7	\$549,413.00	of	\$21,507,299.08
2008 M8	\$429,896.00	of	\$26,256,338.97
2008 M9	\$428,961.97	of	\$47,565,861.84
2008 M10 ²	\$2,794,263.15	of	\$8,206,102.52
2008 12G ³	\$145,718.00	of	\$792,825.96
2008 30G	\$333,898.00	of	\$1,513,435.67
TOTAL	\$5,716,260.80	of	\$246,117,990.70

2

3

Thus, it appears from the Committee's disclosure reports that it accepted

4

excessive contributions.

² The Commission identified \$2,794,263.15 in potential excessive contributions based on the M10 Report, which included \$7,300.00 in excessive contributions from one individual and one political action committee that were not refunded, redesignated, or reattributed within 60 days of receipt, plus \$2,786,963.15 in contributions designated for the 2008 primary election that were reportedly received after the date of the candidate's nomination. A subsequent review of the 6 joint fundraising committees' disclosure reports indicates that approximately \$2,238,783.99 of these "primary-after-primary" funds appear to have been received by the various joint fundraisers before the candidate accepted his party's nomination, and the Committee reported the dates the funds were transferred from the joint fundraising committees, rather than the dates the funds were received by the joint fundraiser as the contribution date. Therefore, the \$2,238,783.99 in contributions might not be excessive, but simply disclosed incorrectly by the Committee. If these "primary-after-primary" contributions are removed from the calculation of excessive contributions, the excessive contribution error rate decreases from 2.32% to 1.41% and the total dollar amount decreases from \$5.7 million to \$3.5 million.

³ The excessive contributions listed for both the 2008 12G and 2008 30G reporting periods are largely "primary-after-primary" contributions. There are no joint fundraising transfers disclosed on these reports.

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1 2. Legal Analysis

2 The Act provides that no person shall make contributions to a candidate for
3 federal office or his authorized political committee, which in the aggregate exceed \$2,300
4 for the primary and general elections, respectively. 2 U.S.C. § 441a(a)(1)(A). The
5 aggregate total of permissible contributions in this matter is \$4,600, which includes the
6 permissible amount of \$2,300 for the primary election and an additional \$2,300 deposited
7 into the McCain-Palin Compliance Fund, Inc. ("GELAC"). Contributions in excess of
8 the \$2,300 limit for the presidential primary election may only be deposited into the
9 GELAC if they are made for the primary, exceeded the contributor's contribution limits
10 for the primary and are lawfully redesignated for the GELAC pursuant to 11 C.F.R.
11 § 110.1. See 11 C.F.R. § 9003.3(a)(1). In addition, candidates and political committees
12 are prohibited from knowingly accepting contributions in violation of the contribution
13 limits set forth in the Act. 2 U.S.C. § 441a(f).

14 Based upon the available information, the Committee appears to have accepted
15 excessive contributions that range from \$3.5 million to \$5.7 million. In light of the total
16 contributions raised, the noncompliance rate appears to have been between 1.41 percent
17 (based on the \$3.5 million figure) and 2.32 percent (based on the \$5.7 million figure).
18 Accordingly, the Commission finds reason to believe that John McCain 2008, Inc. and
19 Joseph Schmuckler, in his official capacity as treasurer, accepted excessive contributions
20 in violation of 2 U.S.C. § 441a(f).

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B. FAILURE TO DISCLOSE A \$56,047 CONTRIBUTION

1. Factual Summary

The complainant alleges that the Committee accepted an excessive contribution totaling \$56,047 from Brian Medeska of Farmington, Connecticut, which it failed to disclose in any of the reports it filed with the Commission. The complainant states that it discovered Mr. Medeska's contribution during its analysis of information posted on the Donor Archive.⁴ *Id.*

The Committee denies that Mr. Medeska made an excessive contribution to the campaign and attributes the identification of a \$56,047.00 contribution from Mr. Medeska in the Donor Archive to the database errors described in the affidavit provided by its E-Campaign Director. According to the Committee, Brian Medeska of Farmington, Connecticut actually contributed a total of \$75 to the campaign; \$25.00 on August 9, 2007 and \$50.00 on January 31, 2008. In support, the Committee provides what it terms a "Contribution Report" generated from the Donor Archive listing Mr. Medeska's two contributions. This report includes Mr. Medeska's city, state, zip code, address, as well as the amount of and donation date for each contribution.

2. Legal Analysis

Treasurers of a political committee are required to file reports of receipts and

⁴ The Committee did not report any contributions from Brian Medeska of Farmington, CT in its FEC disclosure reports.

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1 disbursements in accordance with the provisions of 2 U.S.C. § 434(a).⁵ Authorized
2 committees of a candidate for federal office are required to disclose the total amount of
3 receipts received during the reporting period, including contributions from individuals.
4 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a). Such committees are also required to itemize
5 contributions aggregating in excess of \$200 per election cycle and disclose the
6 identification of the contributor. 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.3(a)(4). This
7 identification includes the contributor's name, address, occupation, the name of his or her
8 employer, if any, and the date of receipt and amount of the contribution.
9 2 U.S.C. §§ 431(13), 434(b)(3)(A); 11 C.F.R. § 100.12, 104.3(a)(4).

10 The available information in this matter does not support a finding that the
11 Committee may have accepted a \$56,047.00 contribution from Brian Medeska of
12 Farmington, Connecticut that it failed to disclose to the Commission in violation of 2
13 U.S.C. § 434(b). According to the Committee's E-Campaign Director, Michael Palmer,
14 the database errors resulted in the complainant accessing inaccurate contribution
15 information for Mr. Medeska. In addition, the Committee's "Contribution Report"
16 provided specific information regarding two contributions, totaling \$75.00, made by
17 Brian Medeska of Farmington, Connecticut. The Commission has no information to the
18 contrary. Given that the aggregate amount of those contributions did not meet the \$200

⁵ In any calendar year during which a general election is held, the principal campaign committees of presidential candidates are required to file monthly reports if the campaign has on January 1 of such year, received contributions aggregating \$100,000 or made expenditures aggregating \$100,000 or anticipates receiving contributions aggregating \$100,000 or making expenditures aggregating \$100,000 during such year. 2 U.S.C. § 434(a)(3)(A). In any other calendar year, the treasurer shall file monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day or the month; or quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar year. 2 U.S.C. § 434(a)(3)(B).

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1 threshold, the Committee was not required to itemize Mr. Medeska's contributions on
2 any of its disclosure reports pursuant to 2 U.S.C. § 434(b)(3)(A).

3 Accordingly, the Commission finds no reason to believe that John McCain 2008,
4 Inc. and Joseph Schmuckler, in his official capacity as treasurer, failed to disclose a
5 \$56,047.00 contribution from Brian Medeska in violation of 2 U.S.C. § 434(b).

6 **C. VIOLATIONS OF THE RECORDKEEPING REQUIREMENTS**

7
8 **1. Factual Summary**

9 The complainant alleges that the Committee violated the Act by failing to
10 properly account for the receipt of anonymous contributions and maintain identifying
11 information for other contributors.⁶ Based on information accessed from the Donor
12 Archive on October 23, 2008, the complaint alleges that the Committee violated the Act
13 by accepting 23 anonymous contributions exceeding \$50 and failing to maintain the
14 names and addresses of those contributors. According to the complainant, these
15 anonymous contributions, which were apparently received between August 11, 2008 and
16 August 31, 2008, totaled \$3,042.

17 The complaint also alleges that the Committee failed to properly maintain the
18 addresses or other identifying information for numerous other contributors. By treating
19 donations with identical names, states and zip codes as having been given by the same
20 person, the complainant concluded that the Committee accepted 94 contributions totaling
21 \$23,614.00 from individuals for whom no street address was provided. According to the

⁶ Although the complainant concludes that the Committee's failure to maintain this contributor information violated 2 U.S.C. § 432(b), as discussed below, these allegations are more appropriately analyzed as a potential violation of 2 U.S.C. § 432(c).

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1 complaint, 46 of these contributions were over \$50.⁷ The complainant further asserts that
2 it is impossible to identify another 94 contributions, totaling \$10,000, listed in the Donor
3 Archive during this same time period because the contributor for each is listed with a last
4 name and (partial) address, but no first name. The complainant reached this conclusion
5 by treating donations with identical last names, states and zip codes as having been given
6 by the same person. The complaint states that 20 of these contributions were over the
7 \$50 limit.⁸

8 The Committee states that it appropriately disbursed anonymous contributions
9 over \$50 to charity in accordance with 11 C.F.R. § 110.4(c)(3), which requires that such
10 contributions be promptly disbursed for any lawful purpose unrelated to any federal
11 election, campaign or candidate. 11 C.F.R. § 110.4(c)(3). As evidence of its proper
12 disposal of these funds, Committee provided a list of 11 checks issued to Operation Smile
13 and the American Heart Association between June 30, 2007 and November 28, 2008.
14 The list, which did not include the amount of each check, provided the name and address
15 of the charity as well as the check number and date of issuance.

16 The Committee explains that it exercised its "best efforts" to find missing
17 contributor information in accordance with the requirements of 11 C.F.R. § 104.7(b).
18 According to the Committee, its "best efforts" processes included requesting
19 contributors' personal information in campaign solicitations and making continual efforts
20 to find missing contributor information. In support, the Committee provided a copy of its

⁷ A review of the Donor Archive list provided by the complainant indicates that the 94 contributions were made by 38 individual donors, 27 of whom appear to have contributed over \$50. Approximately 15 of these individual donors with incomplete address information appear to have contributed over \$200.

⁸ A review of the Donor Archive list provided by the complainant indicates that the contributions at issue were made by 49 individuals, 33 of whom appear to have contributed over \$50.

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1 on-line solicitation to the McCain-Palin GELAC, which requested all identifying
2 information required by the Act and clearly informed contributors that Federal law
3 required the campaign to collect and report the name, mailing address, occupation, and
4 name of employer of individuals whose contributions exceed \$200 in an election cycle.
5 The Committee also furnished a sample follow-up letter, which it states was sent to any
6 individual donor who failed to provide complete identifying information at the time of
7 the contribution. In addition, the Committee states that the campaign searched for
8 missing contributor information in phone directories, web sites and other online
9 databases. According to the Committees, these "best efforts" processes resulted in the
10 campaign identifying 44 out of the 49 contributors identified by the complainant as
11 missing a first name.

12 **2. Legal Analysis**

13 The treasurer of a political committee is required to keep a record of "the name
14 and address of any person who makes any contribution in excess of \$50, together with the
15 date and amount of such contribution" ⁹ 2 U.S.C. § 432(c)(2), 11 C.F.R.
16 § 102.9(a)(1). For contributions aggregating in excess of \$200 during a calendar year,
17 treasurers are required to obtain and preserve the identification of the person in
18 accordance with 11 C.F.R. § 100.12, as well as the date of receipt and amount of such
19 contribution. 2 U.S.C. § 432(c)(3); 11 C.F.R. § 102.9(a)(2). In performing

⁹ The Commission's regulations require that records shall be kept by any reasonable accounting procedure of all contributions received by or on behalf of a political committee. 11 C.F.R. § 102.9(a). The Commission has recommended that reasonable accounting procedures for contributions of \$50 or less may include keeping the same information required for identifying contributions that exceed \$50, which includes the amount, date of receipt, and donor's name and address or in the case of small contributions collected at a fundraiser, such as gate receipts and cash contributions, records of the name of the event, the date and the total amount of contributions collected. See Advisory Opinions 1981-48 (Muskegon County Republican Party) and 1980-99 (Republican Roundup Committee).

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1 recordkeeping duties, the treasurer or his agent shall use his "best efforts" to obtain,
2 maintain and submit the required information. 11 C.F.R. § 102.9(d). If there is a
3 showing that best efforts have been made, any records of a committee shall be deemed to
4 in be compliance with the Act. *Id.*; 2 U.S.C. § 432(i).

5 A political committee receiving an anonymous cash contribution in excess of
6 \$50.00 is required to "promptly dispose of the amount over \$50. The amount over \$50
7 may be used for any lawful purpose unrelated to any Federal election, campaign or
8 candidate." 11 C.F.R. § 110.4(c)(3). The Commission has advised political committees
9 that if the identity of a contributor cannot be determined or is in question, appropriate
10 disbursement of the funds would include giving the funds to a governmental entity
11 (federal, state or local) or a qualified charitable organization as described in 2 U.S.C.
12 § 170(c). *See* Advisory Opinion 1991-39 (D'Amato)(contributions from unidentified
13 contributors should be disbursed by the committee for any lawful purpose unrelated to a
14 federal election, campaign or candidate).

15 Based on the available information, it does not appear that the Committee violated
16 its recordkeeping obligations by failing to properly account for the receipt of anonymous
17 contributions and maintain identifying information for other contributors. 2 U.S.C.
18 § 432(c). First, there is no information to suggest that the Committee utilized the Donor
19 Archive for the purpose of complying with its recordkeeping obligations under the Act or
20 Commission regulations. Second, it appears that the Committee disposed of the 23
21 anonymous contributions at issue in accordance with the Commission's regulations.
22 11 C.F.R. § 110.4(c)(3). The Committee's disclosure reports indicate that the committee
23 made a total of nineteen disbursements totaling \$24,622.58 to the American Heart

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1 Association and Operation Smile between June 30, 2007 and December 30, 2008,
2 including a disbursement totaling \$3,542.50 to the latter charity on October 16, 2008.

3 Further, the Committee presents information and documents indicating that its
4 response to missing contributor information was consistent with the "best efforts" safe
5 harbor, such as requesting complete contributor identification information in its
6 solicitation materials with an accurate statement of the appropriate Federal law,
7 requesting information through follow-up correspondence, and by searching publicly
8 available information for missing names or addresses. 11 C.F.R. § 104.7(b); 2 U.S.C.
9 § 432(i). Although the Committee did not present information relating to specific efforts
10 the campaign may have employed to locate missing addresses for the contributors
11 identified by the complainant, the Committee did provide a list demonstrating its
12 successful efforts to locate the missing first names for the contributors identified in the
13 complaint.

14 Accordingly, the Commission finds no reason to believe that John McCain 2008,
15 Inc. and Joseph Schmuckler, in his official capacity as treasurer, violated 2 U.S.C.
16 § 432(c) by failing to properly account for the receipt of anonymous contributions and
17 maintain identifying information for other contributors.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: John McCain 2008, Inc. and MUR: 6112
Joseph Schmuckler in his
official capacity as treasurer

I. INTRODUCTION

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In August 2010, the Federal Election Commission ("Commission") found reason to believe that John McCain 2008, Inc. ("McCain 2008") violated the Election Campaign Act of 1971, as amended, (the "Act") by accepting an unknown number of excessive contributions in violation of 2 U.S.C. § 441a(f) during the 2008 primary election period in violation of 2 U.S.C. § 441a(f). *See* Factual and Legal Analysis (Sept. 13, 2010) ("F&LA").¹ Relying on information compiled by the Reports Analysis Division, the Commission found that McCain 2008 may have accepted between \$3.5 and \$5.7 million in excessive contributions. The Commission also found that McCain 2008 may have misreported the original date of receipt for certain primary election contributions made through its various joint fundraising representatives resulting in those contributions appearing to have been "primary-after-primary" excessive contributions (*i.e.*, primary contributions made after the date of the primary election).² F&LA at 4, n.2. Further, the Commission found that the Committee might have misreported additional primary contributions redesignated to the GELAC, which was established pursuant to 11 C.F.R. § 9003.3(a)(1). *Id.* The Commission authorized an investigation and a Section 437g audit to determine the extent of McCain 2008's violations.

¹ The Commission also found no reason to believe that McCain 2008 violated 2 U.S.C. § 434(b) by failing to disclose a \$56,047 contribution by Brian Medeska or violated 2 U.S.C. § 432(c) by failing to properly account for the receipt of anonymous contributions and maintain identifying information for other contributors.

² These joint fundraising committees were established pursuant to 11 C.F.R. § 102.6. Participants included McCain 2008, GELAC, the Republican National Committee, and various state party committees.

In response to the Commission's findings, McCain 2008 stated that the campaign made memo entries and retained proof of contribution dates in the form of postmarks and other documents for all alleged primary-after-primary contributions made within the permissible time frame. Further, the Committee contended that any such contributions received after the permissible time frame were appropriately refunded or redesignated to the GELAC. *See* RTB Resp. at 1.

II. FACTUAL AND LEGAL ANALYSIS

A. Misreporting of Joint Fundraising Transfers

The investigation revealed that McCain 2008 failed to report correctly the original dates on which over \$22 million in contributions were received by McCain 2008's joint fundraising committees in violation of 2 U.S.C. § 434(b) of the Act.

The Act requires all political committees to publicly report all of their receipts and disbursements. *See* 2 U.S.C. § 434. Each report shall disclose for the reporting period and calendar year the total amount of all receipts and the total amount of all disbursements. *See* 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a), (b). The Act requires that an authorized committee of a candidate report the amount of all receipts from transfers by affiliated committees, as well as the identity of the affiliated committee and date(s) of transfer. *See* 2 U.S.C. § 434(b)(2)(F), (3)(D); 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(B); *see also* 11 C.F.R. §§ 104.3(a)(4), 104.8.

Commission regulations permit political committees to engage in joint fundraising with other political committees or with unregistered committees or organizations. *See* 11 C.F.R. § 102.17. After a joint fundraising representative distributes the net proceeds, a participating political committee is required to report its share received as a transfer-in from the fundraising

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representative and also file a memo entry on Schedule A itemizing its share of gross receipts as contributions from original contributors as required by 11 C.F.R. § 104.3(a). *See* 11 C.F.R. § 102.17(c)(8)(i)(B). For contribution reporting and limitation purposes, the date a contribution is received by the joint fundraising representative is the date that the contribution is received by the participating political committee, even though the participating political committee is only required to report the proceeds once the funds have been transferred from the fundraising representative. *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8).

During the 2008 election cycle, McCain 2008 received \$22,257,684.17 in transfers from six joint fundraising committees: McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio. These transfers were made on various dates between April 30, 2008 and January 7, 2009. McCain 2008 correctly reported the dates it received transfers from its joint fundraising representatives; however, the Committee did not correctly report the original dates on which the transferred funds were originally received by the joint fundraising representative, as required by 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. §§ 104.3(a)-(b), 102.17(c). McCain 2008's use of the deposit date instead of the original receipt date resulted in the appearance in its disclosure reports that it had accepted millions of dollars of excessive contributions after the date of the candidate's nomination.

The Commission initially brought this problem to the attention of McCain 2008 in Requests for Additional Information ("RFAs"), which questioned a number of primary contributions that were identified as possibly excessive because the Committee received the transfer of funds after the date of the candidate's nomination. *See* RFAI (May 28, 2009), RFAI (May 29, 2009), RFAI (June 2, 2009), and RFAI (July 7, 2009). These RFAs sought

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clarification as to whether the contributions were incompletely or incorrectly reported. The Commission noted in the F&LA that certain excessive contributions may have been misreported as being received after the date of the primary. F&LA at 4, n.2.

McCain 2008 disputes that it misreported joint fundraising receipts. The Committee states that its use of the date of deposit as the date of receipt for these contributions on disclosure reports was both appropriate and consistent with Commission regulations. *See* Resp. to Notification at 2 (June 7, 2012) (“Resp. to Notif.”); Supp. Resp. at 2 (Apr. 14, 2011). McCain 2008 claims that using the deposit date is an established convention among large campaigns seeking to mitigate the logistical hurdles of reporting the actual dates of receipt for thousands of individual contributions. *See* Resp. to Notif. at 2. The Committee points to the Commission’s Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing (“Compliance Manual”), which instructs presidential campaigns to maintain records showing the date of receipt for each contribution and states that, “[u]nless there is evidence that contributions are not deposited promptly upon receipt, the date of deposit will normally be considered to be the date of receipt.” *See* Resp. to Notif. at 2; Supp. Resp. at 2, *citing* Compliance Manual at 46, <http://www.fec.gov/pdf/Compliance2000.pdf>.

McCain 2008’s reporting methodology for joint fundraising receipts is contrary to Commission regulations, Commission precedent, and the Compliance Manual cited by the Committee. The applicable regulation and the parallel Explanation & Justification clearly state that although distribution of joint fundraising proceeds may be delayed until expenses are paid, for reporting and limitation purposes, the date of receipt of such contributions by a participating political committee is the date that the contribution is received by the fundraising representative.

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MUR 6112
John McCain 2008, Inc.
Factual and Legal Analysis

11 C.F.R. § 102.17(c)(3)(iii); *see* Transfer of Funds; Collecting Agents, Joint Fundraising Committees, 48 Fed. Reg. 26296, 26299 (June 7, 1983).

Contrary to the contention of the Committee, moreover, the Compliance Manual section cited by McCain 2008 does not apply to joint fundraising contributions. First, the transfer from the joint fundraising representative provides "evidence that contributions are not deposited promptly" upon their initial receipt. Thus, even by its own terms, this section does not apply. Second, the Compliance Manual contains explicit direction for reporting joint fundraising contributions. According to the Compliance Manual, publicly funded presidential primary committees should follow the procedures at 11 C.F.R. § 9034.8(c) requiring the itemization of joint fundraising receipts as contributions from original contributors to the extent required under section 104.3. *See* Compliance Manual at 18. The Compliance Manual further emphasizes that a "major" element in the regulations is that such contributions are considered received by the participating committee on the date of receipt by the joint fundraising representative. *Id.* at 19.

The Committee's arguments do not alter the fact that McCain 2008 failed to report the dates on which its joint fundraising representatives originally received contributions totaling \$22,257,684.17. Accordingly, the Commission found reason to believe that John McCain 2008, Inc. and Joseph Schmuckler in his official capacity as treasurer violated 2 U.S.C. § 434(b).

B. Misreporting of Transfers to GELAC

A committee that receives an excessive contribution may remedy the excessive amount by refunding the excessive amount or by seeking a redesignation or reattribution within 60 days. 11 C.F.R. § 110.1(b)(5). If a contribution is redesignated by a contributor in accordance with section 110.1(b)(5), the treasurer of the authorized political committee receiving the contribution is required to report the redesignation in a memo entry on Schedule A of the report covering the

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reporting period in which the redesignation is received. 11 C.F.R. § 104.8(d)(2)(i). The first part of the memo entry must disclose all the information for the contribution as it was originally reported on Schedule A. *Id.* The second part of the memo entry must disclose information on the contribution as it was redesignated by the contributor, including the date the redesignation was received and the election for which the contribution was redesignated. *Id.*

The Committee redesignated a total of \$13,782,264 in primary contributions to GELAC. A sample review of these redesignated contributions was performed to test the timeliness of the redesignations and compliance with itemization and disclosure requirements. A projection of primary redesignations to GELAC indicated that \$1,989,693 or 14.4 % of these redesignations were not itemized in memo entries on McCain 2008's disclosure reports.

McCain 2008 stated that the Committee's "regular and intended practice" was to include memo entries with all contributions it redesignated to GELAC. *See* Supp. Resp. at 1. In an attachment, the Committee included a page from its 2008 April Monthly report showing the itemization of a single redesignated contribution. *Id.* at Attach. A. In its response to the audit, McCain 2008 stated that the failure to include memo entries for those redesignations was inadvertent and will be corrected through the amendments to the relevant disclosure reports. *See* Resp. to Notif. at 3.

Because McCain 2008 failed to itemize in memo entries \$1,989,693, or 14.4 % of these redesignations, on its disclosure reports, the Commission found reason to believe that John McCain 2008, Inc. and Joseph Schmuckler in his official capacity as treasurer violated 2 U.S.C. § 434(b).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: McCain-Palin Compliance Fund, Inc. and MUR 6112
Joseph Schmuckler in his official capacity (formerly Pre-MUR 550)
as treasurer

I. INTRODUCTION

The Commission obtained information indicating that the McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler in his official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended, (the "Act") and its implementing regulations. This information suggests that the Committee failed to report properly the dates of receipt for contributions it received through six joint fundraising representatives (collectively, the "Victory Funds"), as the dates received by the Victory Funds (the "original date of receipt").¹ In six reports concerning 2008 activity filed with the Commission, the Committee reported receiving a total of approximately \$13.3 million of contributions transferred from the Victory Funds: June Monthly (\$1,955,452); July Monthly (\$3,820,104); August Monthly (\$2,780,470); September Monthly (\$1,956,947); October Monthly (\$1,445,243); and Year End (\$1,300,712).

Because the Committee did not report the original dates of receipt as required by 11 C.F.R. § 102.17(c)(3)(iii) and reported only the dates that the Victory Funds transferred these contributions to the Committee, the Commission finds reason to believe that the Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 102.17(c)(3)(iii).

¹ The six joint fundraising representatives were: McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California.

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II. FACTUAL AND LEGAL ANALYSIS

The Committee is an authorized campaign committee for Senator John S. McCain, the Republican Party's presidential nominee during the 2008 election cycle. The Committee was established pursuant to 11 C.F.R. § 9003.3(a)(1)(i) and therefore accepted contributions to be used solely for legal and accounting services to ensure compliance with the Act. These contributions included the Committee's share of contributions from affiliated joint fundraising representatives, including the Victory Funds.

The Act requires political committees to report publicly all of their receipts and disbursements. *See* 2 U.S.C. § 434. Each report must disclose for the reporting period and calendar year the total amount of all receipts and the total amount of all disbursements. *See* 2 U.S.C. §§ 434(b)(2), (4); 11 C.F.R. § 104.3(a), (b). The Act requires that an authorized committee of a candidate report the amount of all receipts from transfers by affiliated committees, as well as the identity of the affiliated committee and date(s) of transfer. *See* 2 U.S.C. §§ 434(b)(2)(F), (3)(D); 11 C.F.R. §§ 102.17(c)(3)(iii), 102.17(c)(8)(i)(B); *see also* 11 C.F.R. §§ 104.3(a)(4), 104.8 (providing when committees are required to itemize receipts, including requirements to report contributor information, and the date and amount of transfers from authorized and affiliated committees).

Commission regulations permit political committees to engage in joint fundraising with other political committees or with unregistered committees or organizations. *See* 11 C.F.R. § 102.17. After a joint fundraising representative distributes the net proceeds, a participating political committee is required to report its share of funds received as a transfer-in from the fundraising representative. *See* 11 C.F.R. § 102.17(c)(8)(i)(B). Such a political committee must

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1 also file a memo entry on Schedule A itemizing its share of gross receipts as contributions from
2 original contributors as required by 11 C.F.R. § 104.3. *Id.*

3 For contribution reporting and limitation purposes, the date a contribution is received by
4 the joint fundraising representative is the date that the contribution is received by the
5 participating political committee, even though the participating political committee is only
6 required to report the proceeds once the funds have been transferred from the fundraising
7 representative. See 11 C.F.R. §§ 102.17(c)(3)(iii), 102.17(c)(8).

8 According to memo entries included in its disclosure reports, in 2008 the Committee
9 received approximately \$13.3 million in contributions transferred from the Victory Funds. These
10 transfers were made on various dates between May 31 and December 12, 2008, as follows:

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FEC Report	Date of Transfer	Source of Transfer	Amount
June Monthly	05/31/2008	McCain Victory 2008	\$1,552,397.00
June Monthly	05/31/2008	McCain Victory California	\$403,055.00
June Subtotal			\$1,955,452.00
July Monthly	06/30/2008	McCain Victory 2008	\$3,019,604.00
July Monthly	06/30/2008	McCain Victory California	\$594,955.00
July Monthly	06/30/2008	McCain Victory Florida	\$205,545.00
July Subtotal			\$3,820,104.00
August Monthly	07/31/2008	McCain Victory 2008	\$2,077,460.00
August Monthly	07/31/2008	McCain Victory California	\$249,404.56
August Monthly	07/31/2008	McCain Victory Florida	\$37,150.00
August Monthly	07/31/2008	McCain Victory Ohio	\$416,455.00
August Subtotal			\$2,780,469.56
September Monthly	08/20/2008	McCain Victory 2008	\$700,949.00
September Monthly	08/29/2008	McCain Victory 2008	\$763,372.00
September Monthly	08/29/2008	McCain Victory California	\$309,451.00
September Monthly	08/29/2008	McCain Victory Florida	\$40,820.00
September Monthly	08/29/2008	McCain Victory Ohio	\$142,355.00
September Subtotal			\$1,956,947.00
October Monthly	09/24/2008	McCain Victory Florida	\$7,400.00
October Monthly	09/24/2008	McCain Victory Ohio	\$82,257.00
October Monthly	09/26/2008	McCain Victory 2008	\$930,481.00
October Monthly	09/26/2008	McCain Victory California	\$412,605.00
October Monthly	09/26/2008	McCain-Palin Victory 2008	\$12,500.00
October Subtotal			\$1,445,243.00
Year-End	12/12/2008	McCain Victory 2008	\$892,460.00
Year-End	12/12/2008	McCain Victory California	\$331,702.00
Year-End	12/12/2008	McCain-Palin Victory 2008	\$58,150.00
Year-End	12/12/2008	McCain-Palin Victory California	\$18,400.00
Year-End Subtotal			\$1,300,712.00
TOTAL			\$13,258,927.56

- 1 The Committee correctly reported the dates it received transfers from the Victory Funds. But the
- 2 Committee did not correctly report the original dates of receipt required by 2 U.S.C.
- 3 §§ 434(b)(2), (4) and 11 C.F.R. §§ 104.3(a), (b), and 102.17(c).

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1 The Committee disputes that it misreported joint fundraising receipts. Resp. at 1
2 (Dec. 14, 2012). The Committee concedes that 11 C.F.R. § 102.17(c)(3)(iii) provides both that
3 (1) for contribution reporting and limitation purposes the date of receipt of a contribution by a
4 participating political committee is the date that the contribution is received by the fundraising
5 representative and (2) participating committees must "report joint fundraising proceeds . . . when
6 such funds are received from the fundraising representative." *Id.* The Committee claims,
7 however, that it would be impossible to wait to report the joint fundraising proceeds until the
8 Committee receives them from the fundraising representative and list the date of the original
9 contribution as the reported receipt date, because that date would fall outside of the report's
10 covered period. *Id.*

11 The Committee further claims that using the deposit date as the date of receipt is an
12 established convention among large campaigns seeking to mitigate the logistical hurdles of
13 reporting the actual dates of receipt for thousands of individual contributions. *Id.* at 2. The
14 Committee points to the Commission's Financial Control and Compliance Manual for
15 Presidential Primary Candidates Receiving Public Financing ("Compliance Manual"), last
16 revised in April 2000, which instructs presidential campaigns to maintain records showing the
17 date of receipt for each contribution and states that, "[u]nless there is evidence that contributions
18 are not deposited promptly upon receipt, the date of deposit will normally be considered to be the
19 date of receipt." See Resp. at 2 (citing Compliance Manual at 46, *available at*
20 <http://www.fec.gov/pdf/Compliance2000.pdf>).

21 These arguments are wide of the mark. The Committee's reporting methodology for joint
22 fundraising receipts is contrary to Commission regulations, Commission precedent, and the
23 Compliance Manual cited by the Committee. The applicable regulation and the parallel

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1 Explanation and Justification each plainly state that, although distribution of joint fundraising
2 proceeds may be delayed until expenses are paid, for reporting and limitation purposes, the date
3 of receipt of such contributions by a participating political committee is the date that the
4 contribution is received by the fundraising representative. 11 C.F.R. § 102.17(c)(3)(iii); *see*
5 Transfer of Funds; Collecting Agents, Joint Fundraising Committees, 48 Fed. Reg. 26,296,
6 26,299 (June 7, 1983); Compliance Manual at 19 (“[C]ontributions received by the joint
7 fundraising representative shall be considered to be received by the participating committee on
8 the date of receipt by the representative[.]”).

9 The Committee’s argument fails to appreciate that the two provisions of 11 C.F.R.
10 § 102.17(c)(3)(iii) are not mutually exclusive. Under section 102.17, a participating political
11 committee reports both the date that it receives the joint fundraising proceeds *and* the date that
12 the joint fundraising representative first received those contributions. The obligation to so
13 report, however, is only triggered once the participating committee receives its proceeds from the
14 joint fundraising representative.

15 In addition, contrary to the Committee’s contention, the Compliance Manual section cited
16 by the Committee does not apply to joint fundraising contributions. First, the transfer from the
17 joint fundraising representative provides “evidence that contributions are not deposited
18 promptly” by the Committee, since the joint fundraising representative, and not the Committee,
19 initially received the contributions. Thus, even by its own terms, this section does not apply.
20 Second, and more fundamentally, the Compliance Manual contains explicit instructions for
21 reporting joint fundraising contributions that are fully consistent with the Commission’s plain
22 regulations. According to the Compliance Manual, publicly funded presidential primary
23 committees should follow the procedures at 11 C.F.R. § 9034.8(c) requiring the itemization of

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1 joint fundraising receipts as contributions from original contributors to the extent required under
2 section 104.3. Compliance Manual at 18.² The Compliance Manual further emphasizes that a
3 "major" element in the regulations is that such contributions are considered received by the
4 participating committee on the date of receipt by the joint fundraising representative. *Id.* at 19.

5 As a basis for avoiding liability, the Committee points out in its Response that neither the
6 Commission's Audit Division nor the Reports Analysis Division ("RAD"), despite reviewing the
7 Committee's reports, found fault with the Committee's joint fundraising entries. *Resp.* at 2. The
8 Committee observes that the Audit Division did not include a finding related to this issue in its
9 Draft Final Audit Report, and RAD never requested additional information regarding the
10 Committee's reporting of its joint fundraising contributions or requested that the Committee
11 amend its reports to address this issue. *Id.* at 2-3.

12 The lack of an Audit Division finding or a Request for Additional Information ("RFAI")
13 from RAD does not immunize the Committee from the Commission's enforcement of its
14 regulations. The Committee also seeks to rely on the fact that the Commission did not object to
15 the 2000 and 2004 Bush-Cheney campaigns' use of the "date of receipt of transfer" method to
16 report joint fundraising contributions. *See Resp.* at 2. This reliance is misplaced. The question

² See also *Campaign Guide for Congressional Candidates and Committees* at 89, 137 (Aug. 2011) (providing that a joint fundraising participant should report its share of the net proceeds "as a transfer-in from the joint fundraising representative on Line 12 (Transfer from Other Authorized Committees) and itemize[] the transfer [which includes the date of receipt from the contribution's source] on a separate schedule A for that Line"); *Campaign Guide for Congressional Candidates and Committees* at 61, 139 (Apr. 2008) (similar); *Campaign Guide for Congressional Candidates and Committees* at 51, 68, 107-08 (June 2004) ("A committee receiving [a transfer of the joint fundraising proceeds] must not only report the total amount transferred, but must also itemize, as necessary, its share of gross proceeds as contributions from the original contributors[,] which includes the name and date of the contribution's original source).

1 of correct joint fundraising reporting had not been squarely before and considered by the
2 Commission until MUR 6078 (Obama for America)—which is instructive here.³

3 There, resulting from an inquiry into primary-after-primary contributions, the
4 Commission found reason to believe that Obama for America violated 2 U.S.C. § 434(b) when it
5 failed to report correctly the original receipt dates for joint fundraising contributions totaling
6 \$85,158,116 as the date those contributions were originally received by the joint fundraising
7 representative. *See Commission Certification ¶ 2.a., MUR 6078 (Obama for America) (Mar. 20,*
8 *2012).* No such primary-after-primary contributions were at issue in either the 2000 or 2004
9 Bush-Cheney campaigns. Here, as in MUR 6078 (Obama for America), primary-after-primary
10 contributions illuminated the reporting violations. The lack of enforcement in connection with
11 the Bush-Cheney campaigns does not foreclose an enforcement action here.

12 Finally, the Committee requested an opportunity to amend its reports prior to the
13 Commission initiating an enforcement matter and asserts that an enforcement action before the
14 Committee has an opportunity to amend its reports would be “premature.” *Resp. at 3.* But
15 amendments would mitigate, not vitiate, the Committee’s liability. Any amendments that the
16 Committee agrees to make may be taken into account in the ultimate civil penalty that the
17 Commission accepts following conciliation negotiations.

18 In short, the Committee’s arguments cannot alter the fact that it failed to report the dates
19 on which the Victory Funds originally received the contributions totaling \$13,258,927.56, as
20 Commission regulations require. Accordingly, the Commission finds reason to believe that the
21 Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 102.17(c)(3)(iii).

³ *See First Gen. Counsel’s Rpt. at 14-16, MUR 6078 (Obama for America) (recommending reason to believe that respondent received excessive contributions even though total amount did not meet RAD’s or Audit’s materiality threshold for excessive contributions) (approved Aug. 24, 2010); Second Gen. Counsel’s Rpt. at 6-8, MUR 6078 (Obama for America) (recommending reason to believe finding for misreporting receipt dates for joint fundraising contributions, despite lack of referral by RAD of reporting issue) (approved Mar. 20, 2012).*

FEDERAL ELECTION COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

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OFFICE OF GENERAL COUNSEL

In the Matters of

John McCain 2008, Inc. and
Joseph Schmuckler in his
official capacity as treasurer

and

McCain-Palin Compliance Fund, Inc.
and Joseph Schmuckler in his
official capacity as treasurer

MUR 6112
and AF 2638

CONCILIATION AGREEMENT

This Conciliation Agreement reflects the final resolution of a complaint filed with the Federal Election Commission ("Commission") and information obtained by the Commission concerning contributions received during the 2008 presidential campaign by John McCain 2008, Inc., McCain-Palin Compliance Fund, Inc., and Joseph Schmuckler in his official capacity as treasurer of both committees (collectively, "Respondents") and issues identified in the Final Audit Report of the Commission on McCain-Palin 2008 Inc. and McCain-Palin Compliance Fund, Inc. (Mar. 24, 2008-Dec. 31, 2008).

The Commission found reason to believe that John McCain 2008, Inc. and Joseph Schmuckler in his official capacity as treasurer ("McCain 2008") violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended, (the "Act") by accepting contributions in excess of the limits applicable to the 2008 presidential election. The Commission also found reason to believe that Respondents violated 2 U.S.C. § 434(b) by failing to report correctly the original dates on which contributions were received by joint fundraising representatives and that

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McCain 2008 violated 2 U.S.C. § 434(b) by failing to correctly report contributions redesignated to McCain-Palin Compliance Fund, Inc.

The Commission has further found reason to believe that McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler in his official capacity as treasurer ("GELAC") failed to file certain 48-Hour Notices of contributions of \$1,000 or more received after the 20th day but more than 48 hours before the 2008 general election, in violation of 2 U.S.C. § 434(a)(6)(A), and referred the violation to the Reports Analysis Division ("RAD").

In response to a request from Respondents, on April 9, 2013, the Commission approved merging conciliation of Administrative Fine Matter 2638 ("AF 2638") with MUR 6112, and authorized RAD to transfer AF 2638 to the Office of General Counsel.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts and law in this matter are as follows:

1. McCain 2008 was the principal campaign committee for Senator John McCain during the 2008 primary election cycle. Joseph Schmuckler is the treasurer of McCain

2008. From 2006-2009, McCain 2008 reported raising approximately \$222 million in contributions from more than 1.4 million separate contributors.

2. GELAC is an authorized campaign committee for McCain, the Republican Party's presidential nominee during the 2008 election cycle. GELAC was established pursuant to 11 C.F.R. § 9003.3(a)(1)(i) and therefore accepts contributions to be used solely for legal and accounting services to ensure compliance with the Act. Joseph Schmuckler is the treasurer of GELAC. Between March 1, 2008 and December 20, 2008, McCain 2008 redesignated a total of \$13,782,264 in contributions to GELAC.

3. McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California were joint fundraising committees established pursuant to 11 C.F.R. § 102.17. Lisa Lisker was the treasurer of these joint fundraising committees during the relevant period. McCain 2008 participated in McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio. GELAC participated in McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California.

4. During the 2008 primary election period, McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio reported transferring over \$22 million in contributions to McCain 2008.

5. During the 2008 election period, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and

McCain-Palin Victory California reported transferring over \$13 million in contributions to the GELAC.

Excessive Contributions

6. During the 2008 election cycle, the Act instructed that no person was permitted to make a contribution to a candidate for federal office or the candidate's authorized political committee that in the aggregate exceeded \$2,300 each for the primary and general elections. 2 U.S.C. § 441a(a)(1)(A). As a corollary, it was unlawful for a candidate for federal office or the candidate's authorized political committee to accept contributions that in the aggregate exceeded \$2,300 each for the 2008 primary and general elections. See 2 U.S.C. § 441a(f).

7. McCain 2008 was limited to accepting contributions from individual donors who in the aggregate did not exceed \$2,300 each for the primary and general elections. 2 U.S.C. § 441a(a)(1)(A). Where a committee receives an excessive contribution, the Commission's regulations give the committee 60 days from the date of receipt to identify and refund, redesignate, or reattribute the excessive amount. 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

8. During the primary election period, McCain 2008 accepted a total of \$377,657 in contributions that exceeded the limits set forth in 2 U.S.C. § 441a(a)(1)(A) and were not resolved within 60 days of receipt.

9. Prior to receiving notification of the Commission's reason to believe finding, McCain 2008 resolved \$301,895 of the excessive contributions, though it did so outside of the 60-day time period permitted by the Act for resolving potential excessive contribution violations. See 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. §§ 103.3(b)(3), 110.1(b)(3)(i).

10. After receiving notification of the Commission's reason to believe finding, McCain 2008 resolved an additional \$75,762 in excessive contributions.

Misreporting Receipt Dates of Joint Fundraising Contributions

11. The Act requires political committees to publicly report all their receipts and disbursements. *See* 2 U.S.C. § 434. Each report must disclose, for the reporting period and calendar year, the total amount of all receipts and the total amount of all disbursements. *See* 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a).

12. The Act requires that an authorized committee of a candidate report the amount of all receipts from transfers by affiliated committees, as well as the identity of the affiliated committee and date(s) of transfer. *See* 2 U.S.C. § 434(b)(2)(F), (3)(D); 11 C.F.R. § 102.17(c)(3)(iii), (8)(i)(B). *See also* 11 C.F.R. §§ 104.3(a)(4), 104.8.

13. Commission regulations permit political committees to engage in joint fundraising with other political committees or with unregistered committees or organizations. *See* 11 C.F.R. § 102.17. After a joint fundraising representative distributes the net proceeds, a participating political committee is required to report its share of funds received as a transfer-in from the fundraising representative. *See* 11 C.F.R. § 102.17(c)(8)(i)(B).

14. For contribution reporting and limitation purposes, the date a contribution is received by the joint fundraising representative — not the date received by the recipient political committee — is the date that the contribution is received by the participating political committee. *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8). The participating political committee is required to report the original date of receipt of the proceeds only after the funds have been transferred from the fundraising representative. *Id.*

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15. For the \$22,257,684.17 in contributions received in transfers from its joint fundraising representatives — McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio — McCain 2008 properly reported the dates it received these transfers. But McCain 2008 did not correctly report the original dates that the joint fundraisers received the contributions, as required by 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a)-(b), and 11 C.F.R. § 102.17(c).

16. For the \$13,258,927.56 in contributions received in transfers from its joint fundraising representatives — McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California — GELAC properly reported the dates it received these transfers. But GELAC did not correctly report the original dates that the joint fundraisers received the contributions, as required by 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a)-(b), and 11 C.F.R. § 102.17(c).

Misreporting Transfers to the GELAC

17. Pursuant to Commission regulations, a committee that receives an excessive contribution may remedy the excessive amount by refunding the excessive amount or by seeking a redesignation or reattribution within 60 days. *See* 11 C.F.R. § 110.1(b)(5). If a contribution is redesignated by a contributor in accordance with section 110.1(b)(5), the treasurer of the authorized political committee receiving the contribution shall report the redesignation in a memo entry on Schedule A of the report covering the reporting period in which the redesignation is received. *See* 11 C.F.R. § 104.8(b)(2)(i). The first part of the memo entry discloses all the information for the contribution as it was originally reported on Schedule A. *Id.* The second part of the memo entry discloses information on the contribution as it was redesignated by the

contributor, including the date the redesignation was received and the election for which the contribution was redesignated. *Id.*

18. McCain 2008 redesignated a total of \$13,782,264 in primary contributions to GELAC. A projection of primary redesignations to GELAC indicated that McCain 2008 failed to itemize in memo entries \$1,989,693, or 14.4 % of these redesignations, on its disclosure reports.

19. Respondents contend that a majority of the redesignations were properly itemized on GELAC's reports.

48-Hour Notices

20. The Act requires that a candidate's principal campaign committee shall notify the Commission of all contributions of \$1,000 or more, received by any authorized committee of the candidate less than 20 days but more than 48 hours before any election in which the candidate is running. 11 C.F.R. § 104.5(f).

21. GELAC did not file 48-Hour Notices for 169 contributions totaling \$240,700 that it received prior to the general election. *See* Final Audit Report of the Commission on McCain-Palin 2008 Inc. and McCain-Palin Compliance Fund, Inc. (Mar. 24, 2008-Dec. 31, 2008) at 8; AF 2638. GELAC has waived its right to appeal the \$24,510 administrative fine assessed in AF 2638, and is paying the full amount of the fine as part of the penalty set forth in this Agreement.

V. In the interest of resolving this matter, Respondents admit to the following violations:

1. McCain 2008 violated 2 U.S.C. § 441a(f) by accepting \$377,657 in contributions that exceeded the limits of the Act.

2. McCain 2008 violated 2 U.S.C. § 434(b) by failing to report correctly the original dates on which \$22,257,684.17 in contributions were received by its joint fundraising representatives, McCain Victory Committee, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Kentucky, and McCain Victory Ohio.

3. GELAC violated 2 U.S.C. § 434(b) by failing to report correctly the original dates on which \$13,258,927.56 in contributions were received by its joint fundraising representatives, McCain Victory 2008, McCain Victory California, McCain Victory Florida, McCain Victory Ohio, McCain-Palin Victory 2008, and McCain-Palin Victory California.

4. McCain 2008 violated 2 U.S.C. § 434(b) by failing to correctly report redesignations made to GELAC.

5. GELAC violated 2 U.S.C. § 434(a) by failing to file 48-hour notices with the Commission for contributions of \$1,000 or more received from the close of books for the 2008 12 Day Pre-General Report up to 48 hours before the November 4, 2008 general election.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eighty Thousand dollars (\$80,000.00) to resolve the complaint-generated matter, the additional violation based on information obtained the Commission, and the administrative fine determination pursuant to 2 U.S.C. §§ 437g(a)(4) and (5)(A). The administrative fine accounts for \$20,000.00 of the total penalty.

2. Respondents will cease and desist from violating 2 U.S.C. §§ 434(a), (b) and 441a(f).

3. McCain 2008 will file with the Commission, in Coordination with RAD, amended disclosure reports that will identify the joint fundraising representative's original date

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of receipt for those contributions that are the subject of the reporting errors addressed in this Conciliation Agreement.

4. McCain 2008 will confirm that it has refunded, redesignated or reattributed any contributions identified in the Section 437g audit as excessive and has amended its relevant disclosure reports, including to disclose via itemizations in memo entries redesignations made to GELAC. McCain 2008 will disgorge to the U.S. Treasury any refunded contributions that the contributor fails to negotiate within thirty (30) days of the effective date of this agreement and will provide evidence of any disgorgement (copies of front and back of negotiated check) to the Commission.

5. GELAC will file with the Commission, in coordination with RAD, amended disclosure reports that will reflect the correct receipt dates for joint fundraising contributions that are the subject of the reporting errors addressed in this Conciliation Agreement.

6. Respondents will file amended McCain 2008 and GELAC disclosure reports as outlined above within 30 days from the date this agreement becomes effective. The Commission agrees that McCain 2008 and GELAC may thereafter terminate, in accordance with the applicable provisions of the Act and Commission regulations.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein, or on its own motion, may review Respondents' compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This Agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

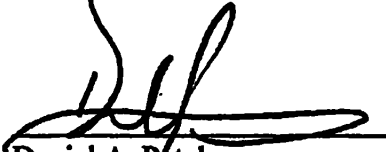
IX. Respondents shall have no more than 30 days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written Agreement shall be enforceable.

FOR THE COMMISSION:

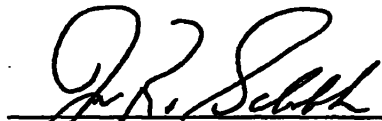
Anthony Herman
General Counsel

BY:


Daniel A. Petalas
Associate General Counsel
for Enforcement

07/16/13
Date

FOR THE RESPONDENTS:


John McCain 2008, Inc. and
Joseph Schmuckler in his official
capacity as treasurer

JUNE 30, 2013
Date

McCain-Palin Compliance Fund, Inc.
and Joseph Schmuckler in his official
capacity as treasurer